

**MINUTES**  
**IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND**  
**PROGRAM**

**May 22, 2008**

**COMMISSIONER'S CONFERENCE ROOM**  
**IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET**  
**DES MOINES, IOWA**

Angela Burke-Boston, sitting in for Chairperson Susan Voss, called the Iowa UST Board meeting to order at 10:00 A.M. A quorum was present. Roll call was taken with the following Board members present:

Jacqueline Johnson (via telephone)  
Nancy Lincoln  
Tim Hall (for Richard Leopold)  
Doug Beech  
Jim Holcomb (via telephone)  
Jeff Robinson  
Stephen Larson (for Michael Fitzgerald) (via telephone)

Also present were:

David Steward, Attorney General's Office  
Tim Benton, Attorney General's Office  
Scott Scheidel, Program Administrator  
James Gastineau, Program Administrator's Office  
Brian Tormey, Iowa Department of Natural Resources

**APPROVAL OF PRIOR BOARD MINUTES**

The minutes from the April 25, 2008 Board meeting were reviewed. Mr. Hall moved to approve the minutes, Mr. Beech seconded the motion, and by a vote of 6-0, the minutes were approved.

**CLOSED SESSION**

Ms. Burke-Boston noted there were matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21. The Board members entered into closed session at 10:05 AM, and the session ended at 10:21 AM. Ms. Burke-Boston noted that Board members had voted in closed session to grant authority to the Administrator's Office to negotiate a settlement for a pending appeal. The motion passed by a vote of 6-0.

*Mr. Holcomb joined the meeting by conference call during the Closed Session.*

## **PUBLIC COMMENT**

Jeff Hove from Petroleum Marketers and Convenience Stores of Iowa (PMCI) addressed the Board regarding an item on the agenda with regard to NPDES permits. He requested the Board consider having more discussion with interested parties before voting on the item.

## **BOARD ISSUES**

### **A. Legislative Update**

Mr. Scheidel updated the Board regarding the House File 2662, which had been discussed at prior meetings. Mr. Scheidel noted that he formally requested the Governor's Office line item veto the appropriations from the UST Fund to the Department of Natural Resources' (DNR's) snowmobile and ATV funds due to the fact that "notwithstanding" language was missing from the bill that was passed. He explained that the line item veto was not exercised, and therefore the bill was signed into law with language that was in conflict with existing law. He noted the Treasurer's Office would now have to reconcile the discrepancy within the law to determine whether or not the transfer of funds may occur.

### **B. 2004 Bond Issue Defeasance**

Mr. Scheidel referred to his memo in the Board packet and reminded the Board that due to the passage of House File 2651 of the TIME 21 legislation, it was necessary to payoff the 1997A Series bonds and defease the 2004A Series bonds by setting up an escrow account separate from the UST Funds by the end of the fiscal year. To that end, Mr. Scheidel provided a statement from Kyle Rice at the Treasurer's Office which discussed the fees involved, as well as, the approximate amount needed in escrow to defease the 2004A Series bonds. He also provided a spreadsheet to outline which UST Funds could be used to finance the \$18,687,894.06 redemption and the approximate \$15,200,000.00 defeasance of the bonds. UST Funds to be used included Revenue Fund, Unassigned Revenue Fund, Loan Guarantee Fund, Marketability Fund, Innocent Landowner Fund and Capital Reserve Fund. Due to the use of Innocent Landowner (ILO) Fund monies, Mr. Scheidel noted that the outstanding ILO claims' and global settlement claims' reserves exceeded the ILO Fund balance. He explained that the Board could decide to suspend acceptance of any new ILO claims until the money was replaced. He also explained that the Board could begin the development of prioritization rules, which would be a lengthy process. And he noted the Board could decide to repay the ILO Fund with one quarterly payment of \$4.25M each year for the next two fiscal years.

Next Mr. Scheidel noted the fees involved with the bond payoff and bond defeasance, including fees from bond counsel (approximately \$8,000), financial advisors (approximately \$25,000), and an escrow verification agent (approximately \$3,000). He explained that the Treasurer determined that a request for proposal for the work involved would not be practical considering the short time frame required to complete the process. Davis Brown Law Firm was the same bond counsel firm used for the issuance and re-funding of the Iowa UST Fund bonds.

Additionally, financial advisors at Public Finance Management (PFM) were used for both outstanding bond series after a competitive bidding process; therefore the Treasurer recommended that the Iowa Finance Authority hire PFM as investment advisor for the defeasance. PFM would hire a third party CPA firm for the escrow verification. Mr. Scheidel explained the Board must approve the following:

- 1) continuation of Davis Brown Law firm as bond counsel
- 2) hiring of PFM as financial advisor
- 3) entering into an escrow agreement with IFA and Banker's Trust for bond defeasance escrow account
- 4) deposit of funds into escrow account to fund defeasance (approximately \$15,200,000)

Mr. Scheidel stated the Board may provide a broad approval for all items needed or approve each separately. After brief discussion Mr. Beech submitted a motion to approve all items listed including the fees with the request that the Treasurer's Office attempt to negotiate a reduction in costs from PFM for their services. Ms. Lincoln seconded the motion, which was approved 6-0. Mr. Larson abstained from the discussion and the vote.

Additionally, by consensus the Board agreed to use the UST Funds consistent with the Board packet to fund the payoff and defeasance of bonds.

### **C. SIC Model (RBCA) Rule Status**

In the continuation of this discussion from previous months, Mr. Scheidel stated he had electronically mailed the final version of the DNR's administrative rules regarding the risk based corrective action (RBCA) model recalibration completed last year. He had also supplied Board members with his statement of the Board's comment on the rule, as submitted to the Environmental Protection Commission (EPC). To summarize, the Board comment was fully supportive of Item 9 of the DNR rule-filing, the model recalibration itself; however the statement did not support the ancillary initiatives represented within the rule.

Mr. Beech asked Mr. Scheidel to comment on the cost to the Board for the implementation of the new rule as drafted by the DNR. Mr. Scheidel noted that the money saved by the recalibration of the RBCA Tier 2 model, which was formerly grossly over-predictive, totaled in the millions of dollars in additional assessment costs. He stated that the costs of the ancillary initiatives within the newly drafted rule could be roughly estimated as such:

If 25 new claims received each year need Tier 2's completed and another 25 sites require revised Tier 2's, and another 25 require additional Tier 2's, then the cost for the rough assessment without any field work would total approximately \$2,000 per site or \$150,000 per year for two years minimum. Some site will require the groundwater professional to request additional work to be completed. Also, the DNR will require additional work and/or Tier 3 study on some sites, the potential costs of which could not be accurately estimated.

Tom Norris from Petroleum Marketers Management Insurance Company (PMMIC) responded to a question from Mr. Beech stating that the additional DNR authority in the rule would result in an extra burden to PMMIC, as all claim sites would go through the Tier 2 process; and the extra

burden would be reflected in client premiums. Also, Mr. Hove agreed that PMCI was concerned about any additional requirements put on its members, as well as, the perception reported in the media that PMCI and its members were not committed to the protection of water supply wells. He noted that the discussions to recalibrate the model were never about putting water supply in jeopardy.

Mr. Beech agreed and inquired why the DNR staff was putting the concerns of water supply representatives before the concerns of all other stakeholders represented in the multi-year discussions. He urged the DNR to pull the rule from the EPC agenda to preserve the relationships between the DNR and the rest of the industry groups. Mr. Scheidel pointed out that the Board was not disinterested in the concerns of water supply, and he had offered to recommend the Board provide some temporary funding through a 28E agreement for the LUST section to research and further investigate water supply receptors at sites which DNR staff felt remained at risk after being cleared by the recalibrated Tier 2 model. However, in the meantime, the water supply problems would be better addressed by the water supply department finding solutions rather than the LUST department getting the UST Fund to pay for resolving them after the fact and for non-LUST problems.

Mr. Hall explained that the DNR had made revisions to the rule over the past several months in the attempt to find a middle ground between all interested stakeholders while trying to find the correct level of protection. Mr. Beech responded that water supply's was the only interest served within the ancillary items in the rule. Mr. Hall assured Mr. Beech that DNR was not taking sides. Mr. Beech stated that wellhead protection should be addressed within water supply rules rather than UST rules.

Mr. Scheidel advised that he had received a consensus from the Board that he would hold the current position in support of item 9 and in opposition of the other items of the rule, and he would proceed as such.

#### **D. Loss Portfolio Transfer -- PMMIC**

*Mr. Holcomb and Mr. Larson exited the conference call at 11:01 AM.*

Mr. Scheidel advised the Board that PMMIC wanted to discuss the loss portfolio transfer (LPT) option with the Board. Mr. Norris recounted PMMIC's history and current plans for growth of the company. He noted the LPT would contribute to that growth and enhance their ability to enter into similar agreements with other states' fund that were scheduled to sunset to eliminate their liabilities and close out their programs. He stated he understood the Board's concerns regarding obtaining signatures from claimants to opt-in to a transfer. He suggested that PMMIC and the Board could send out information about the transfer to all selected claimants and include an opt-out form for signing if they did not wish to have their claims transferred. With regard to any potential profit for PMMIC resulting from an LPT with the Board, he proposed that PMMIC may offer to examine each transferred claim in terms of what is paid out, and if the payouts are much less than what PMMIC received for that claim then would the Board expect consideration. He questioned what consideration PMMIC would receive if payouts were more than what PMMIC received. He also noted that the Board might be concerned with PMMIC taking all

claims except those that have significant and difficult problems. He suggested that it might be more important for the Board wanting to be rid of sites that have current operating tanks, which tends to complicate a claim.

He explained that the previous mini-LPT included 10 of 14 claims, and currently the Board and PMMIC were examining 12-16 more shared sites' claims. He noted that PMMIC was prepared to propose another mini-LPT "and another and another"; however PMMIC would also be willing to discuss a larger scale transfer at a lower administrative cost if the Board was agreeable.

Mr. Scheidel advised the Board to consider Mr. Norris' ideas regarding the opt-out provision and how much money would the Board have to have available to facilitate a transfer and still maintain claim payments for its remaining claims. Mr. Norris pointed out that the longer the Board holds a claim the more that claim will cost the Board. And he made note that PMMIC would be willing to discuss payment in installments with certain safeguards or assurances in the instance that even more funds were diverted from the UST Fund for other state agencies. Once financials were settled past defeasance, the Board should re-evaluate its financial ability to transfer claims.

#### **E. NPDES Permits**

Mr. Scheidel stated that in light of the public comment from Mr. Hove of PMCI, he would be willing to further discuss PMCI's concerns before bringing a recommendation to the Board. He explained that one claim had come to light that the UST Fund had been paying for a pump beyond the need to require the pump for the safety of the environment. This site was no action required (NAR); however the site owner wanted to continue to operate the sump pump to rid his basement of water, and Mr. Scheidel wanted the Board to discuss whether it should continue to pay for the operation of the sump based on the possibility that there could still be some contamination in there. He offered to bring the issue back to the Board at a later date after discussions with PMCI. Ms. Lincoln agreed that the item should be deferred due to time constraints for this meeting.

#### **F. DNR Update**

Elaine Douskey addressed the Board regarding the final version of the RBCA rule noting this was the 4<sup>th</sup> revision of the rule. She noted that early on the EPC had directed the DNR to broaden its stakeholder group. Also, she received the message that the EPC wouldn't accept a rule that included only a recalibration of the RBCA model, but rather would only accept a recalibration in concert with provisions that addressed water supply wells as receptors. Ms. Douskey emphasized the DNR's efforts to balance the concerns of all stakeholders. She reminded the Board that the DNR fully supported the recalibrated RBCA model; however it was a two-dimensional tool and water supply wells were three-dimensional receptors, which required three-dimensional assessment. Also, she noted that many believed the model was recalibrated with a sufficient buffer, however the DNR staff was concerned that it was built on averages – not exactly 2 ½ times over-predictive on every site – with no vertical component.

Ms. Douskey highlighted DNR's efforts toward compromise including the revision of an item that involved the expert judgment of the groundwater professionals to evaluate all data available at the DNR including the water supply department. She also stated that an item involving DNR discretionary authority (from January) was removed from the current rule, so that if the DNR felt a well was at risk that was assessed as not-at-risk by the groundwater professional, then it would be the DNR's burden to prove the well was at-risk. She noted that the Mr. Beech mentioned that the rule was becoming a sourcewater protection program via the funding of UST owners and their funding programs. She explained that the DNR did have an interest in using their own resources to evaluate the petroleum contamination from the well out; however all releases of contamination from LUST sites do also require the assessment of receptors and wells are receptors. Ms. Douskey also mentioned that the DNR put into the rule an outline of when or under what conditions certain items would be exercised to provide guidance. Lastly, she mentioned that the preamble to the rule included the option to revisit the processes outlined in the rule for efficacy and revise the rule as needed, and if the Board would like that built into the rule as a clause, the DNR was willing to comply.

Mr. Scheidel asked Ms. Douskey if the EPC would be willing to accept a rule without the ancillary items, if the DNR presented the rule to them explaining that the Water Supply Section was committed to evaluating the many risks to water supply well receptors and effecting rules to protect them from all types of contamination. She indicated that she didn't know if the EPC would accept it or not.

**G. 28E Agreement – DNR Funding FY08 & FY09**

Mr. Beech suggested that due to time constraints, as the meeting room was scheduled for another group, the Board should include the DNR funding agreements at a later meeting. He expected significant discussion based on the cost added to the Board resulting from the new rule previously discussed. Mr. Hall expressed that he felt it disconcerting to tie the DNR funding agreement to a disagreement regarding the DNR rule. Mr. Beech was concerned that water supply problems should not be tied to the UST Fund. Mr. Scheidel offered to set up a conference call to discuss the issue.

**PROGRAM BILLINGS**

Mr. Scheidel presented the current monthly billings to the Board for approval.

1. Aon Risk Services.....\$122,726.00  
Consulting Services – June 2008 (\$57,513.00)  
Claims Processing Services – June 2008 (\$55,213.00)
2. Attorney General's Office.....\$9,896.40  
Services provided for April 2008

No additional billings for outside cost recovery counsel were presented by the Attorney General's office for this meeting. On a motion by Ms. Lincoln and a second by Ms. Johnson, the billings were approved by a vote of 5-0.

## **MONTHLY ACTIVITY REPORT**

Mr. Scheidel noted that the April activity report, financials and opt-in report were in the Board packets for the Board members to review.

## **ATTORNEY GENERAL'S REPORT**

Mr. Steward addressed the Board regarding a UST Fund lien for \$15,000 on a property that had gone into foreclosure. He stated that he received a notice of foreclosure from a bank stating that they had a \$10,000 mortgage that pre-dates the Board's judgment, and they were giving the Board a 30-day right of redemption to buy the property and try to sell it to recoup Board costs at the site. He recommended the Board authorize him to respond that the Board will not exercise its right to redeem the property, although he offered to advise the bank otherwise if the Board chose to purchase the property. The consensus of the Board was to not contest the foreclosure.

## **CLAIM AUTHORITY**

Mr. Gastineau presented the following claim authority requests:

### **1. Site Registration 8608724 – Burger's Champlin Service, Gillett Grove**

This Board report was for a site classified high risk for the groundwater ingestion pathway for a municipal water supply well and low risk for the protected groundwater source pathway. Corrective action was required and the installation of a soil vapor extraction/air sparge (SVE/AS) system was recommended. A used system from another LUST site might be used at this site to help control costs. Previous authority to \$75,000 had been granted, and \$39,441.60 was incurred to date. Additional authority to \$175,000 as requested for a site monitoring report (SMR) and implementation of the SVE/AS.

A motion to approve the claim authority was submitted by Mr. Hall and seconded by Mr. Beech. Approved 5-0.

### **2. Site Registration 8606254 - Country Stores of Carroll, Carroll**

This was classified high risk for groundwater vapors. A site monitoring report (SMR) had been submitted recommending low risk based on soil gas results. Previous authority to \$75,000 had been granted, and \$87,030.71 was incurred to date. Additional authority to \$115,000 was requested for the SMR, possible corrective action design report (CADR) and possible free product recovery (FPR) activities.

Mr. Hall submitted a motion to approve the claim authority, and Mr. Beech seconded the motion. Approved 5-0.

### **3. Site Registration 8604387 – Flash Oil Corporation, Keokuk**

This site was classified low risk. Significant contamination and free product was found limited to one monitoring well. This was an active UST site. Previous authority to \$75,000 had been granted, and \$82,431.02 was incurred to date. Additional authority to \$120,000 was requested for a SMR and FPR.

Mr. Hall submitted a motion to approve the claim authority, and Mr. Beech seconded the motion, which was approved 5-0.

### **CONTRACTS ENTERED INTO SINCE THE MARCH 27, 2008 BOARD MEETING**

Mr. Scheidel noted that the Board had not entered into any contracts or agreements since the April 25, 2008 Board meeting.

### **OTHER ISSUES**

The Board scheduled a follow-up teleconference for Tuesday, May 27, 2008 at 10AM to discuss the 28E agreement for funding for the Iowa DNR for FY08 and FY09. The Annual Strategic Planning Session was scheduled for Tuesday, July 8<sup>th</sup> at Neal Smith National Wildlife Refuge.

### **CORRESPONDENCE AND ATTACHMENTS**

Ms. Voss asked if there was any further business, and there being none, Ms. Johnson moved to adjourn, and Ms. Lincoln seconded the motion. By a vote of 5-0, the Board adjourned at 11:40 A.M.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott M. Scheidel". The signature is stylized with a large, looped 'S' and a cursive 'M'.

Scott M. Scheidel  
Administrator